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IN THE

Supreme Court of the United States

October Term, 1977

No. 77-1698

WESTERN PENNSYLVANIA MOTOR CARRIERS ASSOCIATION,
Petitioner,
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA, LOCAL 249,
Respondent.

BRIEF ON BEHALF OF RESPONDENT

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BRIEF ON BEHALF OF RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 249, Respondent, respectfully prays this Court refuse to grant a writ of certiorari to review the decision of the United States Court of Appeals for the Third Circuit entered in the above-entitled case on March 30, 1978, re-hearing denied April 24, 1978, in which the Third Circuit reversed the District Court and remanded the case with directions.

QUESTION PRESENTED

Whether the Standard of Review Utilized By The Third Circuit in Determining The Arbitrability of a Particular Dispute is Consistent With The Decisions of This Court and Our National Labor Policy.

STATEMENT OF THE CASE

It appearing that the facts set forth in the opinion of the Court of Appeals are substantially accurate and complete, the Respondent shall address only those portions of the Petitioner's Statement of the Case which it considers deficient in detail and scope. Specifically, the following should be considered in addition and as a modification of the facts set forth in the Petitioner's Statement of the Case.

On July 3, 1975, some two years after the execution of the then effective collective bargaining agreement, the Association submitted its request to the Eastern Conference Joint Area Committee (ECJAC) for relief under Articles 6 and 44 seeking to eliminate the restrictions on spotting (R. 76a).[1] On October 29, 1976, the ECJAC ordered the parties to adjust the matter at the forthcoming negotiations (R. 80a).

During the ensuing negotiations, the Association attempted to amend the agreement to eliminate all restrictions on spotting (R. 84a-89a). This proposal was consistently rejected by the Union and remained unresolved. The rules between the parties provide that

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1. For the convenience of this Court, all page references will be to the Appendix filed by the Union in the Court of Appeals. They will be designated as "R.....".

all unresolved issues be submitted to the National Negotiating Committee for final resolution (R. 27a). Pursuant to those rules all of the unresolved issues, except the proposal relating to spotting, were submitted to the National Negotiating Committee. The Association withdrew its proposal to eliminate the restrictions on spotting, thereby precluding the National Negotiating Committee from resolving the dispute (R. 28a). Thereafter, the Association, without the knowledge of or notice to the Union, induced the ECJAC to render a decision in May 1976, granting the Association's request (R. 30a, 31a). The agenda of the cases to be considered by the ECJAC during that period did not list the Association's original request of July 3, 1975 (R. 91a-108a).

Finally, some additional clarification is needed with regard to the Petitioner's assertion that the Union signed a joint submission form agreeing to be bound by the Committee's decision. Although the submission form admittedly bears the signature of the Union President, his signature was required before the Union could contest the Committee's jurisdiction (R. 22a).

With the correction outlined above, and the additional facts set forth in the Respondent's Statement of the Case, the Respondent accepts the facts outlined by the Court of Appeals and the Petitioner as an adequate statement of the case.

REASONS FOR DENYING THE WRIT

I. The Decision of The Third Circuit Does Not Represent a Departure From The Dictates of This Court Or Our National Labor Policy.

In 1960, in the Steelworkers Trilogy[2] this Court reenforced the Congressional policy set out in Section 203(d) of the Labor Management Relations Act, 29 U.S.C. §173(d), that private dispute settlement was the desirable method for settling labor controversies. However, at the same time this Court made it equally clear that the authority of an arbitrator was not unlimited, and questions involving arbitrability were to be resolved by the Courts.[3] Judicial inquiry is proper when a party challenges the arbitrator's authority to make a particular award. *Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 582 (1960).

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2. *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960); *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed. 2d 1409 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960).

3. *In United Steelworkers of America v. Warrior & Gulf Navigation Co., supra,* (363 U.S. at 583, n. 7), Mr. Justice Douglas, speaking for the majority of this Court, reiterated that the question of arbitrability is for the Courts to decide.

> "Where the assertion by the claimant is that the parties excluded from court determination not merely the decision of the merits of the grievance but also the question of its arbitrability, vesting power to make both decisions in the arbitrator, the claimant must bear the burden of a clear demonstration of that purpose."

The Third Circuit, in recognition of its limited role, confined its inquiry to whether the ECJAC had jurisdiction to grant the Association relief from the prohibitions on spotting (Appendix C, p. 36). In making this determination, the Third Circuit was mindful of the admonitions of this Court that arbitrability "should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage." (Appendix C, p. 36, citing *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. at 582, 583).

The authority for private dispute settlements, whether it be a traditional arbitrator or a joint committee, is a matter of contract between the parties. A party cannot be forced to arbitrate disputes which do not fall within the purview of the contractual provision conferring jurisdiction on the arbitrator. *United Steelworkers of America v. Warrior & Gulf Navigation Co.*, 363 U.S. at 582. In the instant case the authority of the joint committee was clearly defined and limited by the terms of the Maintenance of Standards clause of the collective bargaining agreement (Articles 6 and 44) (R. 63a-73a). After reviewing the contractual language the Third Circuit correctly concluded that the "ECJAC has authority —jurisdiction—to grant relief from the spotting restrictions *only* if those restrictions constitute an 'inadvertent or bona fide error. . . .' In the absence of any such 'error,' no jurisdiction can exist." (Appendix C. p. 37).

The standard of review utilized by the Third Circuit was predicated upon the guidelines established by this Court in *Humphrey v. Moore,* 375 U.S. 335, 84 S.Ct. 363, 11 L.Ed.2d 370 (1964). Although in *Humphrey* this Court

affirmed the decision of the joint committee, it did so only after judicial inquiry convinced this Court that the Committee's decision was reasonable in light of the contractual language. However, this Court explicitly stated that the Committee's power to decide the dispute was limited, and the Committee's interpretation of its power open to the court review.[4]

Contrary to the Petitioner's assertion, the Third Circuit did not promulgate a new standard of review. The judicial inquiry conducted by the Third Circuit was identical to that utilized by this Court in *Humphrey*. Although mindful of the "presumption of arbitrability," the Third Circuit vacated the joint committee's decision because it was clear to the Court that the spotting restrictions did not constitute an "inadvertent or bona fide error." Since the spotting restrictions did not constitute an "inadvertent or bona fide error," the Joint Committee was without authority to disturb the spotting practice. (Appendix C, pp. 38-39). The Third Circuit rejected the Association's assertion that a long-standing and agreed-upon practice was transformed into an "inadvertent and bona fide error"—a necessary jurisdictional predicate for arbitration—because economic circumstances rendered the practice more costly than had been anticipated (Appendix C, p. 38).

4. In *Humphrey,* this Court did not defer to the joint committee's determination of arbitrability; instead, this Court conducted an in-depth inquiry into the committee's jurisdictional determination. With regard to the issue of arbitrability, this Court stated that the "... section of the contract by its own terms appears to limit the authority of the committee.... Reconciliation of these two provisions, going to the power of the committee under the contract, itself presented an issue ultimately for the court, not the committee, to decide." (375 U.S. at 345, n. 8)

The restrictions on spotting, which had been incorporated into successive collective bargaining agreements since 1958, did not result from anything susceptible to characterization as "error." The most forceful evidence of this fact is the memorandum submitted by the Association to the ECJAC, which failed to indicate that the Association was requesting relief from an error (R. 76a-78a).

The Third Circuit's inquiry into the authority of the ECJAC convinced the Court that the restrictions on spotting were not susceptible of being characterized as an error,[5] and consequently the ECJAC was without authority to rule upon the Association's request. It is respectfully submitted that the decision of the Third Circuit does not manifest infidelity to the dictates of this Court, or our national labor policy, and therefore, certiorari should be denied.

5. The Third Circuit's adherence to the dictates of this Court and our national labor policy are clearly evidenced by the following:

> "We are mindful of the fact that our Court 'has consistently rejected invitation to inquire into arbitrability, where such inquiry would be coextensive with a determination of the merits of a controversy.' *Local 719 Bakery and Confectionery Workers v. National Biscuit Company,* 378 F.2d 918, 923 (3rd Cir. 1967). That, however, is not the situation before us, since the ECJAC clearly has no authority to grant the requested relief unless there has been an 'error' ". (Appendix, p. 39 n. 13).

II. The Decision of The Third Circuit is Not in Conflict With The Decision of Another Court Of Appeals.

The Petitioner has asserted that the decision of the Third Circuit is in conflict with the decision of the Fifth Circuit in *Teamsters v. Braswell Motor Freight Lines,* 392 F.2d 1 (5th Cir. 1968), *reh. denied in part* 395 F.2d 655, *appeal after remand,* 428 F.2d 1371, *cert. denied.* 401 U.S. 937 (1971). It is respectfully submitted that this contention is without merit.

The *Braswell* decision actually reaffirms the Third Circuit's refusal to defer to an arbitrator's determination regarding subject matter jurisdiction. In fact, the Court in *Braswell* explicitly stated that judicial review is appropriate when the question involves arbirability (392 F.2d at 6, n. 6).

The judicial inquiry conducted by the Fifth Circuit was identical with that utilized by the Third Circuit in determining whether the joint committee had the authority to decide the "spotting" controversy. In *Braswell* the Court carefully scrutinized the contractual language which defined the extent of the committee's jurisdiction. The Court then concluded that the joint committee's determination regarding arbitrability was susceptible of an interpretation covering the dispute. Similarly, the Third Circuit refused to defer to the committee's determination of arbitrability, and instead made an independent inquiry. Although the method utilized by both Courts was identical, the Third Circuit found the committee's determination to be unreasonable, and hence, not susceptible of an interpretation covering the dispute.

In addition to the *Braswell* decision, the Petitioner relies upon the Fifth Circuit's decision in *International Association of Machinists v. Texas Steel Company,* 538 F.2d 1116 (5th Cir. 1976), as support for its contention that there is a conflict among the various circuits. In *Texas Steel* the Court again reaffirmed that it is the Court's function to inquire into whether the dispute actually was arbitrable (538 F.2d at 1119). In *Texas Steel* the Court of Appeals affirmed the district court's finding that the dispute was arguably within the confines of the arbitration clause. However, the procedure utilized by the Court in arriving at that determination was identical to the procedure utilized by the Third Circuit. Both Courts refused to defer to the arbitrator's determination regarding arbitrability. Each Court scrutinized the contractual language to determine whether it was susceptible to an interpretation covering the asserted dispute. Although the ultimate conclusion reached by the two circuits differed, the underlying methodology was consistent with this Court's guidelines.

The "presumption of arbitrability" was never intended to expand the jurisdictional limits which the parties contractually agreed would govern their relationship. The record in the instant proceeding is replete with evidence that the restrictions on spotting were knowingly incorporated into successive collective bargaining agreements since at least 1958 (R. 76a-77a). This is not a case where the arbitrator was called upon to decide problems left by gaps in the contract. The contractual language explicitly states that relief is appropriate only if the conditions resulted from an error. In *Price v. Teamsters,* 457 F.2d 605 at 610 (3rd Cir. 1972), the Third Circuit stated:

> "A court will defer to arbitrators or committees when they are exercising their delegated powers to decide unforeseen or unresolved problems arising out of gaps or content in the contract. However, *it will not allow them to ignore provisions embodied in the agreement: the basic contract rights must be enforced.*"

In the instant case the basic contractual rights granted to the Union permitted them to enjoy the highest standard of benefit established. That highest standard could not be subject to the ECJAC's jurisdiction unless it resulted from an error. At best, it may have been a bad economic decision by the employer to agree to such a condition of employment (Appendix C, pp. 38, 39). Nonetheless, absent an error, the ECJAC had no authority to pass upon the Association's request and the Union was entitled to have its basic contract rights protected.

The Respondent respectfully submits that this Court should refuse to grant certiorari, since the standard of review utilized by the Third Circuit was consistent with the decisions of this Court and other circuits. The Respondent does not believe there is uncertainity in our national labor policy, nor is there uncertainty in the decisions of the various circuits.

CONCLUSION

It is respectfully submitted that for the reasons stated above, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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